UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

In re:	Case No. 09-47585
DAVID ANDREW BOLANOWSKI, and COLLEEN SUE BOLANOWSKI,	Chapter 7
	Judge Thomas J. Tucker
Debtors. _____/	

ORDER REQUIRING CREDITOR TLC COMMUNITY CREDIT UNION TO SUPPLEMENT ITS "MOTION TO COMPEL TURNOVER OF 2008 DODGE RAM, [ETC.]"(DOCKET # 34)

On August 31, 2009, Creditor TLC Community Credit Union ("Creditor") filed a motion entitled "Motion to Compel Turnover of 2008 Dodge Ram and For Sanctions, Costs and Fees Under Fed. R. Bankr. P. 9011" (Docket # 34, the "Motion"), and a memorandum of law in support of the Motion (Docket # 35). On September 24, 2009, Creditor filed a certificate of no response, indicating that no one has timely objected to the Motion (Docket # 38).

The Court concludes that it cannot yet grant the Motion, and that Creditor should be required to supplement the Motion to address the concerns expressed in this Order.

The Motion seeks an Order requiring "immediate turnover of Creditor's collateral . . . and impos[ing] sanctions, attorney fees and costs and grant[ing] any relief that the Court deems just and reasonable if such turnover is not completed within the Court's timeframe." The memorandum of law in support of the Motion states only that "Creditor herein specifically relies upon 11 U.S.C. [§] 727," but gives no explanation of why this provision gives the Court authority to grant the relief requested in the Motion. The Motion also alleges, vaguely, that Debtors have committed a "clear violation under Chapter 7 of Title 11." But it is not apparent to the Court what provision(s) of Chapter 7 the Motion is referring to, or why any such violation

authorizes the relief requested. Finally, the caption of the Motion cites Fed.R.Bankr.P. 9011, but the Motion does not explain how that rule authorizes the relief requested. It is not apparent to the Court why any of the provisions of law cited by Creditor authorize or require any of the relief Creditor seeks in the Motion.

The Motion notes that the Debtors have been granted a discharge, and seems to assume from this that the automatic stay no longer applies with respect to the vehicle in question. Creditor may be right that the automatic stay no longer applies with respect to the vehicle, but for other reasons, *e.g.*, based on 11 U.S.C. §§ 521(a)(6) and 362(h)(1). But the Creditor's conclusion does not follow from the mere fact that Debtors have received their discharge. And Creditor has not sought an order confirming that the stay is terminated with respect to this vehicle, or an order terminating the stay.

The Motion states: "On July 15, 2009, the Debtors [sic] Chapter 7 case was discharged as to both Debtors; therefore, the stay has been lifted to said vehicle." (Docket # 34 at 2 ¶ 15). However, absent some exception like that contained in §§ 521(a)(6) and 362(h)(1), in this case the automatic stay is still in effect as to any action Creditor may wish to take against the vehicle, such as repossession and sale of the vehicle, notwithstanding the Debtors' discharge. This is because, absent some exception to the general rule, the vehicle is still property of the bankruptcy estate. That is so because (1) the Debtors scheduled the vehicle in their Schedule B and did not claim the vehicle as exempt in their Schedules C (Docket # 1); and (2) the Trustee has not abandoned the vehicle. *See* 11 U.S.C. §§ 362(c)(1), 554(c). And that is so even though the Chapter 7 Trustee has filed a no-distribution report. The general rule, stated in 11 U.S.C. § 362(c)(1), is that "the stay of an act against property of the estate under subsection (a) of this

section continues until such property is no longer property of the estate."[1]

In any event, it is not apparent that this Court has authority to affirmatively order Debtors to deliver possession of the vehicle to Creditor, as opposed to merely lifting the automatic stay (or recognizing that the stay has terminated under §§ 521(a)(6) and 362(h)(1)), so that Creditor may pursue its turnover-relief in an appropriate non-bankruptcy court, under applicable non-bankruptcy law. (The latter course of action is suggested by the following phrase in § 521(a)(6): "and the creditor may take whatever action as to such property as is permitted by applicable nonbankruptcy law.")[2] The Court will give Creditor an opportunity to supplement its Motion, to explain specifically what authority permits (or requires) this Court to grant Creditor the relief it seeks in the Motion.

Accordingly,

IT IS ORDERED that no later than **October 2, 2009**, Creditor must file a supplement to its Motion, which explains specifically what authority permits (and/or requires) this Court to grant Creditor the relief it seeks in its Motion, rather than merely ordering that the automatic stay is terminated with respect to the vehicle in question.

The Court will further consider the Motion after reviewing the required supplement. If such supplement is not timely filed, the Court may deny the Motion without further notice or

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[1] The automatic stay would, of course, terminate as the vehicle when this bankruptcy case is closed, under the combination of 11 U.S.C. §§ 362(c)(1) and 554(c). At the moment, it appears that the only thing keeping this case open is the pendency of Creditor's Motion.

[2] Some published versions of the Bankruptcy Code place this quoted language immediately after § 521(a)(7), while others place it immediately after § 521(a)(6). It appears from a review of the actual bill that enacted the 2005 amendments to the Bankruptcy Code that the latter placement is the correct one.

hearing.

Signed on September 25, 2009

/s/ Thomas J. Tucker
Thomas J. Tucker
United States Bankruptcy Judge